



EGYPT
CITY OF CAIRO
EMBASSY OF THE UNITED
STATES OF AMERICA

ASSISTANCE TO UNITED STATES CITIZENS: LEGAL PROCEDURES IN EGYPT

DISCLAIMER: The information in this flyer relating to the legal requirements of Egypt is provided for general information only and may not be totally accurate in a particular case. Questions involving interpretation of specific Egyptian laws should be addressed to Egyptian counsel. This flyer seeks only to provide information; it is not an opinion on any aspect of U.S., Egyptian or international law. The U.S. Department of State does not intend by the contents of this flyer to take a position on any aspect of any pending litigation.

Applicable Treaties or Other Publications:

The Vienna Convention on Consular Relations, 21UST 77; 596 UNTS 261; TIAS 6820 (Articles 5, 36, 37)

U.S. Department of State Human Rights Report on Egypt, 2007.

Mutual Legal Assistance Treaty Between the United States and Egypt, 2001.

Constitution of the Arab Republic of Egypt, 1971.

BACKGROUND: Americans who violate foreign laws should not expect preferential treatment in foreign judicial systems because of their American citizenship. Americans violating Egyptian law can be arrested, fined, imprisoned or expelled. If arrested in Egypt, American citizens will be processed through the Egyptian legal system and the U.S. government may not provide them with legal representation. Within this framework, U.S. consular officers will do everything within their capabilities to assist American citizen who are incarcerated.

AN OVERVIEW OF THE PROCESS:

ARREST AND CONSULAR ACCESS TO PRISONERS: An individual can be arrested in Egypt by the police, on the authority of the public prosecutor or under Emergency Laws (in force in Egypt since 1981), depending on the nature of the alleged offense. Any person arrested or detained has the right to be informed forthwith of the reasons for his arrest or detention and the charges leveled against him. The home or residence of the accused, his/her telephone calls, correspondence, and other means of communication cannot be inspected or monitored without a judicial warrant based on cause.

Article 36(a) of the Vienna Convention on Consular Relations of 1963, 21 UST 77, TIAS 6820, 596 UNST 261, a multilateral treaty to which the United States and Egypt are signatories provides that consular officers shall be free to communicate with their nationals and to have access to them. In addition, Article 36(b) provides that the foreign authorities shall inform consular officers of the arrest of a national “without delay” (*no time frame specified*), **if the national requests such notification.** Americans who find themselves arrested in Egypt should request access to a U.S. consular officer as soon as possible.

DETENTION CONDITIONS: Detainees are normally taken to a police station for the initial investigation. The detainee will be released from the Police Station if the police find that there is no evidence of involvement in a crime. If the police determine that there is involvement, the detainee will be referred to a prosecutor for more investigation or the prosecutor can order immediate deportation from Egypt. If detained by State Security officers the detainee will be taken to a State Security facility.

If held, the detainee will share a cell with other detainees. Prison conditions are very poor. Minors under the age of 18 are taken to juvenile facilities.

LEGAL REPRESENTATION: Like U.S. law, Egyptian law provides that a defendant is innocent until proven guilty and grants the defendant the right to be defended by counsel at trial. Every person accused of a crime shall be provided with counsel for his/her defense. A court hearing for a criminal case cannot proceed until a lawyer is present to represent the defendant. This rule, however, does not apply to misdemeanors. A person on trial before a court can either appoint a local lawyer at his own expense to defend him/her or be defended by a court-appointed lawyer (without charge to the accused).

It is advisable for an arrested individual to obtain the services of a local attorney. American law prohibits Consular Officers from giving legal counsel but Consular Officers can provide a list of reputable attorneys in Egypt. A local attorney will be familiar with the language and legal system of Egypt, and should be able to give appropriate legal advice, arrange for bail, and assist with case presentation and appeal if necessary. The Embassy does not provide legal advice or representation, nor can it make any guarantees regarding the professional performance of local attorneys who have

identified themselves as willing to assist American citizens and are therefore included on the Embassy's list.

TRIAL: A trial is held when the investigation is completed and the prosecutor orders the case referred to a court. The minimum age to be tried as an adult is 18.

In general, Egyptian courts follow the adversarial system (like the United States). This system involves opposing parties that present facts and arguments to judges, who are not involved in the fact-finding stage but rather ensure that legal and procedural standards are adhered to as they weigh the evidence in coming to a decision. The Egyptian system tends to reflect a little more of the inquisitorial approach, in which judges may take a more active role in questioning parties or gathering information at trial. Egyptian courts do not dismiss a case just for lack of evidence or factual matters as frequently as in American courts.

Unlike the American court system, litigants in Egypt are expected to present all the facts, evidence, and documentation supporting their case at the outset of the trial. There is no discovery process that allows the parties extra time to gather supporting materials for a case after the initial submission of information.

Criminal courts. Egypt has been under emergency law since 1981. This status affects the court system because for criminal cases, there is the regular criminal court system and also a separate one operated by Egyptian State Security. Depending on the nature of the issue, a criminal case may be labeled as an emergency, thereby preventing it from gaining review by the court of cassation. In such a case, only a military official has the authority to review an appeal. If a criminal case is not deemed an emergency, then it is possible for it to receive review from the Court of Cassation (Egypt's Supreme Court).

There are three gradations of criminal violations. The lowest is an infraction or simple violation, which is punished by fines. The next level is misdemeanor, which may be punishable by either fines or a maximum of three years imprisonment. The most serious level is the felony, which is punishable at the least by imprisonment, and may include capital punishment. Any fines for felonies would be in addition to imprisonment. While any claimant may initiate legal actions for infractions or misdemeanors, only the state prosecutor may initiate litigation for felonies. Each level of criminal violation – infraction, misdemeanor, and felony – maintains separate courts. The trial level (Court of First Instance) for infractions and misdemeanors will have one judge; however, for felonies the trial court will have a panel of three judges. Additionally, the felony system does not maintain an appeals level. This means that any felony appeals from the trial level will go directly to the Court of Cassation.

DEPORTATION: The prosecutor can order immediate deportation from Egypt at any time. Local authorities usually inform Post about a deportation case and they typically ask Post to provide repatriation assistance to the individual being deported.

OTHER LEGAL ISSUES:

DUAL NATIONALITY: There are no specific legal treaties between Egypt and the United States regarding dual nationality.

IMMIGRATION: If an American Citizen overstays their visa they must pay a fine on departure or when they renew their resident visa. The Embassy strongly suggests that the American citizen resolve the fine with the Immigration Ministry before attempting to leave the country.

NARCOTICS: Egyptian law defines drugs as any natural drug, including but not limited to hashish, heroin, cocaine, opium, morphine, cannabis or marijuana, or any synthetic drug without a prescription. The penalty for possession or distribution of illegal drugs in Egypt is the following:

Capital Punishment with a fine of between LE 100,000 and LE 500,000, Hard Labor for life or temporary Hard Labor, for all who:

- Export or import narcotics
- Grow, retain, acquire, buy, sell, consign or transport narcotics
- Produce, extract, separate or fabricate narcotics with the aim of trafficking
- Form, manage or are member in a gang, even outside the country
- Possess, acquire, buy, sell, transport, or deliver narcotics with the aim of trafficking
- Manage or prepare a place for the use of narcotics in return for payment

THE PRIVACY ACT: The Privacy Act of 1974 generally prohibits Consular Officers from releasing any information about a United States citizen without the individual's prior consent. The Consular Officer who first visits a detained U.S. citizen will ask for a list of persons to whom information may be released. Names can be added or deleted from the list at any time. All arrests of U.S. citizens are routinely reported to the Department of State in Washington D.C.

THE ROLE OF THE CONSULAR OFFICER: The Embassy is concerned about the welfare of arrested Americans. We are ready to assist you in any way legally possible to protect you from unjust or harsh treatment; however, the role of the Consular Officer is limited to:

- Ensuring that your rights are fully observed under *local law*.
- Visiting you as soon as possible after we are notified of your arrest, and continuing to visit you throughout your incarceration.
- Informing you of your rights, and describing the Egyptian judicial procedures that apply to your case.
- Providing you with a list of local attorneys from which you may select defense counsel.
- Contacting your family or friends, if you so wish, for financial or other aid (e.g. food supplements, clothing), and arranging visits if possible.

- Reporting the arrest and subsequent development of your case to the Department of State.
- Protesting mistreatment.
- Providing dietary supplements to qualified detainees.

The Consular Officer has no funds for bail, legal fees or expenses of an indigent American detainee. Likewise, the Consular Officer cannot demand the release of a U.S. citizen nor represent a U.S. citizen at trial. The Consular Officer will remain in regular contact with you, your attorney and local officials to determine how you are being treated and to make sure that the legal process is not unduly delayed. We also do whatever is possible to resolve any difficulties resulting from conditions of detention. Neither arrest nor conviction deprives a U.S. national of the right to the Consul's best efforts in facilitating the citizen's welfare and defense or in seeking to ensure that the citizen's legal rights are respected.

QUESTIONS: Additional questions regarding services to Americans incarcerated in Egypt and may be addressed to the United States Embassy in Cairo, Egypt, American Citizen Services Section, +202-2-797-3300 or Near East and South Central Asia division of the Office of American Citizen Services, Department of State, Room 4817 N.S., 2201 C Street N.W., Washington D.C. 20520, Tel (202) 647-5225; 647-5226.